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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STUBBLEFIELD PROPERTIES, Plaintiff and Respondent, v. MARTIN C. JACINTO, Defendant and Appellant.	D074718 (Super. Ct. No. CIVDS1208547)

APPEAL from an order of the Superior Court of San Bernardino County, Bryan F. Foster, Judge. Order affirmed; sanctions requests denied.

Nancy Duffy McCarron for Defendant and Appellant.

Hart and King, Robert G. Williamson, James S. Morse and Rhonda H. Mehlman for Plaintiff and Respondent.

After Stubblefield Properties (Stubblefield) prevailed in a nuisance lawsuit against Martin C. Jacinto, the trial court awarded it $190,499 in statutory attorney's fees. Jacinto's prior counsel, who failed to file an opposition to the fee motion or appear for the

hearing, did not promptly seek to set it aside. More than two years after the order, Jacinto retained new counsel and sought to set aside the fee order on equitable grounds, claiming his former counsel colluded with opposing counsel to subject him to an onerous fee award. Jacinto appeals the denial of that set aside motion.

As we explain, our review at this juncture is limited to deciding whether the 2015 fee order was *void*. Because there were at least two statutory bases to support an award of attorney's fees, the court had fundamental jurisdiction to enter its order. Although an order may be set aside on equitable grounds for extrinsic fraud, there was no *evidence* to support the unsubstantiated claims of collusion between counsel. We are sympathetic to Jacinto, who now faces an onerous fee obligation due to his former attorney's unprofessional errors. Nevertheless, because that attorney continued to act as Jacinto's representative, albeit ineffectively, Jacinto cannot be relieved from the fee order on equitable grounds under the narrow exception provided in *Daley v. Butte County* (1964) 227 Cal.App.2d 380, 391 (*Daley*), which only applies where there has been an abandonment of the client or other action by the lawyer that severs the attorney-client relationship. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Stubblefield operates the Mountain Shadows Mobile Home Community in Highland, California. Carol K. leased a space in that community to park her mobilehome. She sold her mobilehome to Jacinto in 2011 without Stubblefield's consent, allegedly in violation of her written lease and the Mobilehome Residency Law (MRL,

Civ. Code, § 798 et seq.).[1] Because Jacinto and his wife were not seniors, they were not eligible to live in the senior living community. Jacinto paid rent for a time but then stopped. Stubblefield sued Jacinto for ejectment, trespass, and nuisance; the complaint sought compensatory damages and costs but not attorney's fees.

Jacinto filed a cross-complaint asserting claims based in contract and tort, as well as violations of federal and state civil rights laws.[2] In his prayer, Jacinto sought "reasonable attorney's fees, including and pursuant to [Code of Civil Procedure section] 1021.5."[3] Answering the cross-complaint, Stubblefield sought attorney's fees as a terminating sanction under section 128.7, claiming Jacinto's pleading was "frivolous as filed and/or prosecuted."

The case proceeded to a jury trial in 2014. Finding Jacinto's evidence insufficient, the court directed a verdict in Stubblefield's favor on the cross-complaint. The jury returned a special verdict in Stubblefield's favor on its complaint and awarded it

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1 The MRL "regulates relations between the owners and the residents of mobilehome parks." (*Cacho v. Boudreau* (2007) 40 Cal.4th 341, 345.)

2 Jacinto alleged a violation of the California Fair Employment and Housing Act (FEHA, Gov. Code, § 12900 et seq.) and other state and federal laws based on Stubblefield's alleged refusal to allow Jacinto's mother to move into the mobilehome to meet the community's age requirement. Jacinto claimed that a Stubblefield employee told him, "No. You guys are Hispanic, and Hispanics bring a lot of traffic, and I don't want a lot of traffic in my place."

3 Further statutory references are to the Code of Civil Procedure unless otherwise indicated. Section 1021.5 allows recovery of private attorney general fees "to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest."

$41,166.58 in compensatory damages. An amended judgment later added $16,721.92 in costs.

Stubblefield filed a postjudgment motion requesting $190,449 in attorney's fees, relying in part on attorney fee provisions in the MRL (Civ. Code, § 798.85) and FEHA (Gov. Code, § 12965, subd. (b)). In an attached declaration, lawyer Robert Williamson stated his firm had billed Stubblefield $159,549 at reduced rates, and reasonable fees at hourly market rates justified the higher requested amount. A hearing was set for November 19, 2014. Before that date, attorney Robert Nahigian substituted in as Jacinto's counsel.

Nahigian failed to appear at the November 19 hearing or at the continued hearing on December 17. The court again continued the hearing to February 18, 2015. Meanwhile the parties attempted to settle and coordinate outstanding construction "punch list" items that Jacinto had to complete.

On the morning of February 18, Nahigian e-mailed Williamson about the hearing: "Reminding that I am in Federal Court [. . .] San Diego today. Please postpone." Williamson promptly replied, "It is up to the court. He may not postpone. I have cost of reporter and interpreter for ojd [*sic*]. You pay for them if court continues?" Nahigian agreed to pay those costs if the court continued the hearing. Less than an hour later, Williamson sent Nahigian a post-hearing update: "Noted your SD appearance. Court would not continue, ruled anyway. $190K atty fees."

The reporter's transcript for the hearing indicates that Williamson told the court, "Mr. Nahigian . . . sent me an e-mail in the morning, saying he's in federal court. He's

not going to appear. You know, this motion has been pending for a long time." The court stated it was ready to rule and granted Stubblefield's motion.[4] It then asked if Jacinto was prepared for the scheduled judgment debtor examination. Noting Jacinto's failure to appear, the court issued a bench warrant.

Nahigian appeared in court later that afternoon with Jacinto to resolve the bench warrant issue. He admitted miscalendaring the morning hearing. The court indicated that it made its ruling because there was no opposition on the fee motion; it suggested that Nahigian "do a reconsideration or whatever you feel is necessary." Nahigian stated that he had been in San Diego that morning and that Williamson "said the court was not willing to continue it." The court replied, "I don't know why [he] said the court wasn't willing to continue it, it didn't come to me. Explain it next time, maybe you can work something out."

A minute order dated February 18, 2015 granted Stubbelfield's fee motion; a formal order followed on February 25. On August 24, Jacinto filed a motion to set aside the order based on excusable neglect, pursuant to section 473, subdivision (b) (the first

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4 The fee motion requested $190,449, but the court orally pronounced an award of $190,249. The court did not suggest it was awarding a smaller amount than requested by Stubblefield. The written order indicated an award of $190,499. The parties make no note of the discrepancies on appeal.

set aside motion).[5] In his attached declaration, Nahigian indicated that despite his lack of written opposition, he was prepared to challenge the award as unreasonable.

Stubblefield opposed the motion, arguing it had been filed more than six months after the court's order and did not comply with statutory requirements. (§ 473, subd. (b) [relief "shall not be granted" unless the application is accompanied by the proposed filing and "shall be made within a reasonable time, in no case exceeding six months, after the . . . order, or proceeding was taken"].) It further argued that to the extent the request was a renewed reconsideration motion, Jacinto was required to present new or different facts pursuant to section 1008.[6] The court denied Jacinto's first set aside motion in September 2015. A motion to reconsider that ruling was also denied. Jacinto appealed, but upon his request, the appeal was dismissed in April 2016.

Represented by new counsel, Nancy Duffy McCarron, Jacinto filed a new motion in June 2017 to set aside the February 2015 fee order on equitable grounds pursuant to

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[5] Subject to certain requirements, section 473, subdivision (b) permits a court to "relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

[6] In his first set aside motion, Jacinto stated he had attempted to file a reconsideration motion on February 25, 2015, but it was rejected and returned for defects. "[S]ection 1008 imposes special requirements on renewed applications for orders a court has previously refused. A party filing a renewed application must, among other things, submit an affidavit showing what 'new or different facts, circumstances, or law are claimed' (*id*., subd. (b)) to justify the renewed application, and show diligence with a satisfactory explanation for not presenting the new or different information earlier . . . ." (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 833 (*Even Zohar*) [section 1008 governs renewed applications under section 473, subdivision (b)].)

section 1916 (second set aside motion).[7] Jacinto maintained that the 2015 fee order had been "obtained by fraud on the court and collusion of Jacinto's [prior] attorney [Nahigian] with opposing counsel," rendering it "void in fact" based on extrinsic fraud.[8] Jacinto argued competent counsel would have noted that fees were unwarranted under the MPL or FEHA and challenged the amount requested as exceeding the fees actually billed. He also claimed that the 2015 fee order was void because the complaint did not seek fees, and a judgment granting relief not demanded in the complaint is void.

The second set aside motion listed Nahigian's mistakes, including his failure to oppose the fee motion or show up at the hearing, his advice to ignore the judgment debtor examination, his failure to file a timely set aside motion, and his advice to file a frivolous appeal that Jacinto later abandoned. In an attached declaration, Jacinto alleged he was harmed by "Nahigian's . . . fraud, and collusion with Robert Williamson to sell me out." He attached a "chronology" to his declaration that stated Nahigian had promised Jacinto he could convince Williamson, "his long-term friend" from school days, "to accept considerably less fees." Noting pending disciplinary action against Nahigian, Jacinto alleged in this "chronology" that Nahigian was engaged in a "racketeering enterprise"

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[7] Section 1916 provides: "Any judicial record may be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings."

[8] Section 473, subdivision (d) allows a court, "upon motion of the injured party, or its own motion, [to] correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and . . . , on motion of either party after notice to the other party, set aside any void judgment or order." Jacinto did not bring a statutory motion under this section but instead filed a motion pursuant to the court's inherent equity powers.

against his clients. He also lodged copies of the judgment and various court filings, a malpractice complaint pending against Nahigian, and other documents.

Stubblefield opposed the motion, arguing that allegations of " 'collusion' " during earlier proceedings amounted only to " 'intrinsic fraud,' " which would not provide an equitable basis to set aside the 2015 order.[9] Noting this was the fourth attempt to challenge that order, Stubblefield contended that Jacinto failed to show new facts or circumstances that could not have earlier been presented. (*Even Zohar*, *supra*, 61 Cal.4th at p. 833; § 1008.) It maintained Jacinto failed to offer a "scintilla of admissible evidence" justifying allegations of collusion or fraud between Nahigian and Williamson and, in a separate filing, lodged 60 evidentiary objections. Stubblefield requested $10,350 in sanctions against Jacinto and McCarron.

Meanwhile, Stubblefield filed a separate motion seeking attorney's fees and costs incurred to *enforce* the 2015 fee order. Jacinto filed an opposition that prompted Stubblefield to file a new request for sanctions of $7,350 for "frivolous actions and/or delaying tactics" by Jacinto and McCarron. Jacinto opposed Stubblefield's sanctions request. An attorney declaration filed with Stubblefield's reply denied any professional or social friendship or unprofessional dealings between Williamson and Nahigian.

The parties appeared in court on August 24, 2017. Jacinto claimed prejudice from Stubblefield's untimely filing, and the court continued the hearing. On September 8, the court considered three motions—Jacinto's second set aside motion, Stubblefield's motion

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9 We explore the differences between extrinsic and intrinsic fraud in the discussion.

for enforcement fees, and Stubblefield's request to sanction Jacinto for filing a frivolous opposition to its enforcement fee motion.[10] The court denied all three motions.

Turning to Jacinto's second set aside motion, the court sustained nearly all of Stubblefield's evidentiary objections and overruled Jacinto's objections to the Williamson declaration. It denied equitable relief, finding "no evidence" to support the claims of fraud or collusion between Nahigian and Williamson. It reasoned:

> "This instant motion was brought after Jacinto retained [his] sixth attorney. It's 29 months after the entry of the fee order and [he] is now alleging collusion of fraud by Stubblefield's counsel as a basis to set aside the fee order. There's no additional new or admissible evidence beyond what has already been presented or evidence [that] with reasonable diligence could have been presented with prior counsel over a year ago. The new characterization of the motion [that] independent acts of Stubblefield's counsel [constituted] fraud or collusion with former counsel are just epithets. . . . They are drawing on unwarranted defamatory or factually devoid conclusions. They are not evidence."

Addressing Jacinto's remaining arguments, the court explained that the judgment was not void on its face so as to give rise to a sua sponte power to vacate it. (§ 473, subd. (d).) Instead, the 2015 fee order "accurately reflects the Court's ruling granting the motion for attorney fees." It also rejected Jacinto's claim that Stubblefield did not seek fees in its complaint. The cross-complaint requested fees, and a judgment rendered on an inadequate complaint "does not deprive the trial court of 'jurisdiction' in the fundamental sense" to allow collateral attack. (*Barquis v. Merchants Collection Association* (1972) 7 Cal.3d 94, 99). Ultimately, the court reasoned it had considered and rejected two

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10 The court did not separately address Stubblefield's request for $10,350 in sanctions included in its opposition to Jacinto's second set aside motion.

motions in 2015 based on the same alleged errors by prior counsel, rendering the second set aside motion an "improper and an untimely motion for reconsideration under [section] 1008."

DISCUSSION

Jacinto appeals the denial of his second set aside motion. Stubblefield seeks to dismiss the appeal, affirm the court's order, and impose sanctions against McCarron and Jacinto for filing a frivolous appeal. In response to the latter argument, Jacinto seeks to sanction Stubblefield. Limiting our review to issues properly before us, the 2015 order fell within the court's fundamental jurisdiction, and the record does not permit equitable relief. Because Jacinto raises a nonfrivolous (albeit unsuccessful) claim to equitable relief under *Daley*, *supra*, 227 Cal.App.2d 380, we deny both requests for sanctions.

1. *We deny Stubblefield's motion to dismiss but limit the issues on appeal.*

Before the briefs were filed Stubblefield moved to dismiss Jacinto's appeal as taken from a nonappealable order denying a set aside motion. We denied the motion without prejudice, and Stubblefield raises the issue again in its respondent's brief. As we explain, the set aside denial is appealable, but *solely* to the extent Jacinto claims the 2015 fee order was void or should have been set aside as such on equitable grounds.

Orders denying a set aside motion are generally not appealable; otherwise, an appellant would either receive two appeals from the same decision or, if no timely appeal was filed, an unwarranted extension of time to pursue an appeal. (*311 South Spring Street Co. v. Department of General Services* (2009) 178 Cal.App.4th 1009, 1014; see generally, *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651.) An

exception lies where the underlying order is alleged to be *void*; in such a case, the order denying the set aside motion is itself void and appealable because it effectuates a void order. (*311 South*, at p. 1014; see *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933.) Jacinto argues as it did before the trial court that the 2015 order is void. The court's order denying his second set aside motion is therefore appealable to review the merits of *that* particular claim. (*311 South*, at p. 1014; *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 1004, 1008−1009 (*Doppes*).)

Although Jacinto uses the word "void" throughout his appellate briefs, most of his arguments challenge alleged defects that would merely render the 2015 fee order *voidable*. As a general matter, "jurisdictional errors can be of two types. A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56 (*Goddard*).) "A judgment is void to the extent it provides relief 'which a court under no circumstances has any authority to grant.' " (*Doppes*, *supra*, 174 Cal.App.4th at p. 1009; *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 339 (*Kabran*) [a lack of fundamental jurisdiction means a complete absence of power to decide the matter].)

But "most procedural errors are not jurisdictional." (*Goddard*, *supra*, 33 Cal.4th at p. 56.) "Once a court has established its power to hear a case, it may make errors with respect to areas of procedure, pleading, evidence, and substantive law" without opening the judgment or order to collateral attack. (*Ibid.*; *Airs Aromatics, LLC v. CBL Data Recovery Technologies, Inc.* (2018) 23 Cal.App.5th 1013, 1022.) Because a court that

merely acts in excess of its jurisdiction still has jurisdiction in the fundamental sense, "any such act is 'valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel or the passage of time' [citation]." (*Kabran*, *supra*, 2 Cal.5th at p. 340.) An erroneous judgment or order that nevertheless lies within the court's fundamental jurisdiction may be reviewed only directly—e.g., through a timely motion to vacate or by appeal. (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 1, p. 583; *Kabran*, at p. 340.)

Jacinto raises only two arguments as to why the trial court lacked *fundamental jurisdiction* to enter the 2015 fee order. First, he argues there was no legal basis for the court to award attorney's fees, which were not requested in Stubblefield's complaint. He also claims the fee order should have been set aside as void on equitable grounds based on conduct by his former counsel.[11]

None of Jacinto's remaining arguments address the court's fundamental jurisdiction to award fees. (See *Goddard*, *supra*, 33 Cal.4th at p. 56.) He contends: (1) Stubblefield's original fee motion was untimely; (2) its statements during motions in limine judicially estopped it from recovering fees under the MRL (Civ. Code, § 798.85); (3) its alleged cashing of a payoff check *after* the 2015 fee order ended the litigation under theories of accord and satisfaction and the one final judgment rule; and (4) public policy favors resolving disputes on the merits. Even assuming these ancillary claims had

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11 Overlapping with the latter contention, Jacinto argues res judicata does not bar re-litigation of factual theories where there is evidence of fraud or collusion.

any merit, they would not render the 2015 fee order *void*.[12] Although these claims might have been raised on a timely appeal from the 2015 fee order, they may not be on appeal from the denial of Jacinto's set aside motion in 2017.

Thus, we limit our discussion to whether the trial court had fundamental jurisdiction to award Stubblefield $190,499 in attorney's fees in 2015, and whether it reasonably denied equitable relief based on extrinsic fraud or mistake. (See *Doppes*, *supra*, 174 Cal.App.4th at p. 1009 [on appeal from denial of set aside motion, scope of review was limited to "whether the trial court lacked jurisdiction to award prejudgment interest"—i.e., that the award "was not mere error, but rather ventured outside the boundaries of the powers of the court, as defined by statute"].)

These inquiries have different standards of review. We independently review whether the 2015 order was void as outside the court's fundamental jurisdiction. (*Pittman v. Beck Park Apartments, Ltd.* (2018) 20 Cal.App.5th 1009, 1020 (*Pittman*).) Because a motion to set aside an order based on extrinsic fraud or mistake "is addressed to the sound discretion of the lower court" (*Davis v. Davis* (1960) 185 Cal.App.2d 788, 792), we review the denial of equitable relief for an abuse of discretion. (*In re Marriage of Park* (1980) 27 Cal.3d 337, 347 (*Park*).)

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12 For example, Jacinto fails to explain how the court's acceptance of late-filed papers would render its 2015 fee order void. (See *Kabran*, *supra*, 2 Cal.5th at p. 341 [failure to comply with mandatory time provisions stated in procedural rules typically " 'does not render the proceeding void' in a fundamental sense"]; *Gunlock Corp. v. Walk on Water, Inc.* (1993) 15 Cal.App.4th 1301, 1304 [concluding time limit to file a motion for attorney's fees was not jurisdictional in character under substantively similar predecessor to California Rules of Court, rule 3.1702].)

2. *The trial court had fundamental jurisdiction to award attorney's fees.*

Jacinto recites the "American rule"—"each party to a lawsuit ordinarily pays its own attorney fees." (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751.) But this default rule can be overcome by statute. (*Tract 19051 Homeowners Assn. v. Kemp* (2015) 60 Cal.4th 1135, 1142; *Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co.* (2007) 549 U.S. 443, 448.) Here there were at least two statutory bases permitting an award of attorney's fees to Stubblefield as the prevailing party. Consequently, the court had fundamental jurisdiction to award fees.

Stubblefield's complaint alleged: "All relations between the Park and tenants residing within the Park are governed by the provisions of the Mobilehome Residency Law, Civil Code, § 798, *et seq*." In its postjudgment fee motion, Stubblefield argued:

> "The instant litigation arose directly from the MRL. Subdivision (b) of Civil Code Section 798.87 provides that a substantial violation of a mobilehome park rule is deemed a public nuisance that may only be remedied by a civil action or abatement. [¶] Plaintiff's Community Guidelines (rules) were admitted into evidence without objection. They prohibit maintenance of a nuisance and articulate specific requirements for removing a mobilehome. Defendant's mobilehome was vacant and uninhabitable and required substantial repairs and maintenance. Defendant's refusal to repair or remediate its substandard condition or remove it from the community according to the Community Guidelines was a substantial violation of Plaintiff's community rules. Defendant's mobilehome thus constituted a nuisance for which Plaintiff filed its action to have the mobilehome removed and for damages."

The MRL allows an award of reasonable attorney's fees and costs to the prevailing party in "any action arising out of" its provisions. (Civ. Code, § 798.85.) "To be entitled to attorney fees and costs pursuant to [Civil Code] section 798.85, the underlying case

must arise in the context of those relationships and claims addressed by the MRL. It is not sufficient that the case 'relates to' the MRL." (*SC Manufactured Homes, Inc. v. Canyon View Estates, Inc*. (2007) 148 Cal.App.4th 663, 675 (*SC Manufactured Homes*).) "A case may 'arise' under the MRL even if a complaint does not allege a specific cause of action under the MRL, as long as the dispute is one within the scope of the MRL." (*Id.* at p. 676; see *Del Cerro Mobile Estates v. Proffer* (2001) 87 Cal.App.4th 943, 951 [apportionment of MRL attorney's fees was unnecessary between contract and nuisance claims where both "arose from a common core of operative facts"].)

Jacinto argues "no MRL basis existed" because Stubblefield took the stance during pretrial motions that the MRL's pre-eviction notice rules did not apply to Jacinto, who had not signed a lease. This same argument is elsewhere presented as a judicial estoppel claim. But such claims have no bearing on whether the court had the *power* to award attorney's fees. (*Doppes*, *supra*, 174 Cal.App.4th at p. 1009.) Nor did the complaint need to assert a cause of action under the MRL to support an award of fees under that statute. All that is required is that "the dispute is one within the scope of the MRL." (*SC Manufactured Homes*, *supra*, 148 Cal.App.4th at p. 676.)

There is an additional statutory basis for the fee award. In his cross-complaint, Jacinto asserted claims under FEHA (Gov. Code, § 12955), the Fair Housing Act (42 U.S.C. §§ 3604(a), 3605), and federal civil rights laws (42 U.S.C. §§ 1981, 1985(3)), all premised on the notion that Stubblefield was trying to evict him because he was Hispanic. Each of these statutory schemes permit an award of attorney's fees to the prevailing party. (42 U.S.C. §§ 1988(b), 3613(c)(2); Gov. Code, § 12965, subd. (b).)

In seeking fees, Stubblefield argued that the directed verdict on all of Jacinto's cross claims demonstrated that the antidiscrimination claims were entirely groundless by trial. (See *Taylor v. Centennial Bowl, Inc.* (1966) 65 Cal.2d 114, 120−121 ["Such a verdict may be properly granted if and only if, after disregarding conflicting evidence, and indulging every legitimate inference which may be drawn from the evidence in plaintiff's favor, it can be said that there is no evidence of sufficient substantiality to support a jury verdict in [his] favor."].) Stubblefield further claimed that Jacinto's cross-complaint "drove up [its] attorney fees exponentially"—allegations that management engaged in discriminatory housing practices could cause alarm among senior mobilehome residents, many Hispanic.

As the prevailing cross-defendant, Stubblefield needed to show that Jacinto's discrimination claim "was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so" to be entitled to an award of fees. (*Christianburg Garment Co. v. Equal Employment Opportunity Commission* (1978) 434 U.S. 412, 422; *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 101; see Gov. Code, § 12965, subd. (b) [incorporating the *Christianburg* standard].) Apportionment of attorney's fees is not required where different claims rest on common facts or related legal theories or " 'are so inextricably intertwined" that apportionment would be impractical or impossible. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1251.)

Jacinto contends Stubblefield could not recover fees under FEHA or other antidiscrimination statutes "because the court never found [Jacinto's] claim frivolous—a

prerequisite to defendants' fee eligibility." Again, Jacinto confuses fundamental jurisdiction with mere procedural error. (*Goddard*, *supra*, 33 Cal.4th at p. 56.) Only the former renders an order *void* and open to collateral attack. (*Ibid.*; see *Doppes, supra,* 174 Cal.App.4th at p. 1009.) Although Jacinto might have sought direct appeal on the basis that necessary findings were not made, such a claim may not be raised on appeal from the denial of a set aside motion two years later.

Finally, Jacinto suggests the 2015 order was nevertheless void because: (1) Williamson did not ask to continue the hearing; (2) Jacinto was deprived an opportunity to be heard; and (3) the fee request was based on market rates and exceeded actual billings by $40,000. The first and last of these claims allege mere procedural error, not jurisdictional error, and do not provide a basis for collateral attack. The second is identical to Jacinto's equitable claim, which we turn to next.

3. *Jacinto is not entitled to equitable relief on our record.*

Apart from any statutory authority, a court has inherent equity power to set aside a void order. (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 206, pp. 811−812; see *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855.) "One who has been prevented by extrinsic factors from presenting his case to the court may bring an independent action in equity to secure relief from the judgment entered against him." (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) This "settled doctrine" (*Cross v. Tustin* (1951) 37 Cal.2d 821, 824−825) is reflected in section 1916, which allows a judgment or order to "be impeached by evidence . . . of collusion between the parties" or fraud.

In his second set aside motion, Jacinto argued that his former counsel (Nahigian) colluded with Stubblefield's counsel (Williamson) to subject Jacinto to an onerous fee award. Stubblefield responded that Jacinto's claim rested on *intrinsic*, not extrinsic, fraud and did not provide a basis to set aside the 2015 order. Agreeing with that premise, the trial court denied equitable relief.[13] The distinction between intrinsic and extrinsic fraud matters, and as we explain, the court's finding is compelled by our record. There was no abuse of discretion in denying Jacinto's motion to set aside the fee order based on extrinsic fraud.

Moreover, Jacinto is not entitled to invoke the exception under *Daley*, *supra*, 227 Cal.App.2d 380 to set aside an order on equitable grounds based on his former attorney's inexcusable neglect. Although Nahigian grossly mishandled the fee motion, the record reflects that he did not de facto *abandon* Jacinto so as to fit that narrow avenue for equitable relief.

a. *Jacinto presented no evidence of extrinsic fraud.*

As a general rule, res judicata protects a judgment or order that is not void on its face after the time to challenge it by direct means has passed. An exception applies

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13 In pronouncing its tentative, the court explained that it "ha[d] to construe such matters as extrinsic fraud which provides no legal basis for setting aside the judgment or the order for each party." It later ruled, "I still believe that it's intrinsic fraud and based on my tentative ruling, it's not within the court's purview to change it." Read in context, it is clear that the court misspoke in pronouncing its tentative and intended to state that Jacinto's claim was one alleging *intrinsic*, not extrinsic fraud. We reject Jacinto's claim on appeal that "the court erred by finding *extrinsic* fraud was not grounds for equitable relief."

where the ruling is obtained by extrinsic fraud or mistake that prevents a fair adversary hearing. "Such a judgment is not entitled to the usual conclusive effect, and equitable relief is allowed after the time for appeal, new trial, or other statutory means of review has expired." (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 215, p. 823.)

" 'The essence of extrinsic fraud is one party's preventing the other from having his day in court.' " (*Navarro v. IHOP Properties, Inc.* (2005) 134 Cal.App.4th 834, 844 (*Navarro*); *Barber v. California Credit Council* (1964) 224 Cal.App.2d 635, 637 [extrinsic fraud or mistake is found where the aggrieved party was deprived of "an opportunity to participate in the proceedings"].)[14] It occurs when a party " 'was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding.' " (*Navarro*, at p. 844.) Jacinto relies on the classic formulation of extrinsic fraud recited in *United States v. Throckmorton* (1878) 98 U.S. 61. In that case, the United States Supreme Court explained that where a lawyer "corruptly sells out his client's interest to the other side," the court may be justified in setting aside the judgment "on the ground that, by some fraud practised directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court." (*Id.* at p. 66.)

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14 The terms "extrinsic fraud" and "extrinsic mistake" "are given a broad meaning and tend to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing. It does not seem to matter if the particular circumstances qualify as fraudulent or mistaken in the strict sense." (*Park, supra*, 27 Cal.3d at p. 342.)

" 'By contrast, fraud is intrinsic *and not a valid ground for setting aside a judgment* when the party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary but has unreasonably neglected to do so.' " (*Navarro, supra,* 134 Cal.App.4th at p. 844, italics added.) " 'When a claim of fraud goes to an issue involving the merits of the prior proceeding which the moving party should have guarded against at the time, or if the moving party was guilty of negligence in failing to prevent the fraud or mistake or in contributing thereto . . . any fraud is intrinsic fraud.' " (*Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17, 27.)

The distinction is critical. If the fraud is *extrinsic*, a party may seek equitable relief without the time limitations of section 473. But if it is *intrinsic*, equitable relief is unavailable, and a party is limited to a statutory motion under section 473. (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 151, p. 745; *Beresh v. Sovereign Life Ins. Co.* (1979) 92 Cal.App.3d 547, 552 (*Beresh*) [quoting Witkin].)

Jacinto framed his motion as seeking relief from extrinsic fraud—i.e., that his former attorney conspired with opposing counsel to deny him his day in court. (*Navarro, supra,* 134 Cal.App.4th at p. 844.) Pointing to various errors by Nahigian, Jacinto suggested collusion offered the only explanation. During the hearing, McCarron asked: "What lawyer does that if he isn't in collusion with the other side?"

The court pressed for something more concrete: "What evidence do you have of collusion? That's a statement you are making." It reminded McCarron that "you are rearguing the issue as to whether or not he's entitled to fees. This motion is not about

that. This motion is about whether or not there was collusion for fraud perpetrated on the Court that makes this a void [order]." It repeatedly asked McCarron to identify evidence supporting her claim. When McCarron revisited Nahigian's errors, the court clarified, "You are talking about what Mr. Nahigian did or didn't do in terms of what he could have done to have opposed all of these things. The fact of the matter is . . . that that's not sufficient in my mind to grant a motion to declare the [fee order] void."

McCarron then argued that Williamson had tricked the court by not asking for a continuance on February 18, 2015. She noted that Nahigian had asked Williamson in an e-mail that morning to "[p]lease postpone," but Williamson never relayed that request. The court disagreed with McCarron's characterization: there was no agreement to postpone, nor a request by Nahigian directed to the court clerk. Finally, McCarron ventured that collusion was apparent from the fact that Nahigian and Williamson addressed each other on a first-name basis. The court believed that showed civility, not collusion.

Jacinto continues in the same vein on appeal. He provides a chronology of events and asks at each turn "[w]hat attorney, if not colluding with [his] opponent" would: (1) "not file opposition he had already written"; (2) "not object to Williamson's trickery"; (3) "not refile [the initial rejected motion to reconsider] immediately after it was returned"; (4) "wait 6 [months] to refile-after deadline expired"; and (5) "intentionally file a [set aside] motion 10 days too late." According to Jacinto, "[o]nly a colluding attorney would call opposing counsel—rather than a clerk—to seek an emergency continuance under exigent circumstances." Ultimately, such speculation does not amount to *evidence*

of extrinsic fraud. The trial court reasonably found that Jacinto's allegations of fraud or collusion were "just epithets" that drew on "unwarranted defamatory or factually devoid conclusions . . . not evidence."[15]

As the party seeking equitable relief, Jacinto bore the burden to show extrinsic fraud. (See, e.g., *Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the burden of proof is like "a built-in bias in favor of the status quo," and a moving party must present sufficient *evidence* to overcome it].) The court sustained the bulk of Stubblefield's objections to Jacinto's declaration, "chronology," and supporting exhibits. Jacinto makes a three-line argument in his opening brief, without citation to legal authority, that the evidentiary rulings were prejudicial error because he knew what transpired during Nahigian's representation. To the extent he develops the argument on reply, the objections were properly sustained under any standard of review.[16]

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15 McCarron's reply brief before the trial court relied on egregious ad hominem attacks against opposing counsel, arguing without support that he defrauded courts through trickery and sabotage and was "nothing more than a callous bully who tries to use Judge's [*sic*] as his private whipping posts." Although her tone is more muted on appeal, McCarron makes passing reference opposing counsel's "insatiable greed" and "hoodwinking" of the trial court. Such remarks have no place in professional advocacy and do little to advance a client's interests. "Ad hominem arguments, of course, constitute one of the most common errors in logic: Trying to win an argument by calling your opponent names ('Jane, you ignorant etcetera . . . .') only shows the paucity of your own reasoning." (*Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1430.)

16 "Broadly speaking, an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence." (*People v. Waidla* (2000) 22 Cal.4th 690, 717; but see *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535 (*Reid*) [sidestepping whether de novo review applies for evidentiary rulings made solely on the papers].)

"Declarations must show the declarant's personal knowledge and competency to testify, state facts and not just conclusions, and not include inadmissible hearsay or opinion." (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761.) Jacinto's declaration simply lists various things Nahigian purportedly stated or failed to disclose and opines without foundation that Nahigian colluded with Williamson "to sell me out." The attached "chronology," itself hearsay, recites Nahigian's hearsay statement to Jacinto that Williamson was a "long-term friend" who could be convinced "to accept considerably less fees." Like the declaration, it opines without foundation that "Nahigian was covertly conspiring with Mr. Williamson to sell [Jacinto] out." Although Stubblefield did not bear the burden of proof, it offered competent evidence through Williamson's attorney declaration that he first heard of Nahigian when he substituted in as Jacinto's counsel. This tended to undermine Jacinto's claim of collusion or fraud.

On our record, any fraud or mistake alleged by Jacinto was invariably *intrinsic*. Jacinto was not deprived of his day in court. He was served with Stubblefield's attorney's fee motion, and his counsel admitted actual notice on the morning of the motion hearing. Nevertheless, he neglected to file an opposition, failed to appear in court, and did not timely move to set aside or appeal the resulting order. Jacinto's due process challenge lacks merit on these facts. (*Lachance v. Erickson* (1998) 522 U.S. 262, 266 ["[t]he core of due process is the right to notice and a meaningful opportunity to be heard"].) Although packaged as a claim of extrinsic fraud, the only reasonable finding is the one reached by the trial court—i.e., that Jacinto challenges intrinsic fraud. (*Navarro, supra*, 134 Cal.App.4th at p. 844 [fraud was intrinsic where litigant "was not prevented from

participating in the proceedings"]; *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300 (*Sporn*) ["in spite of defendant's inappropriate characterization of plaintiff's conduct, there is nothing in the record that would support a finding of extrinsic fraud"].)

Sporn is instructive. A defendant who failed to file a timely statutory motion for relief from a default judgment unsuccessfully sought equitable relief, claiming the plaintiff and his counsel obtained the judgment by stealth, by laying in the weeds, and through improper tactics amounting to extrinsic fraud. (*Sporn, supra,* 126 Cal.App.4th at p. 1300.) None of these characterizations were supported by the record. (*Ibid.*) As we do here, the appellate court concluded that the defendant could not rely on baseless attacks on the integrity of plaintiff and his lawyer to invoke the court's equitable power to set aside the judgment. (*Ibid.*)[17]

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17 Jacinto's cases are not on "all fours," as he claims. In *Lovato v. Santa Fe Internat. Corp.* (1984) 151 Cal.App.3d 549, an attorney was suspended from the bar and fired by his client but continued to purportedly represent the client without authority. The client was entitled to relief from the resulting default because it "was deprived of any opportunity to present its case in court." (*Id.* at p. 555.) In *Estudillo v. Security Loan & Trust Co.* (1906) 149 Cal. 556, borrowers told their attorney to file an answer in a foreclosure action challenging the amount of indebtedness alleged. Instead, the attorney stipulated to a default judgment, triggering sale of the mortgaged property. (*Id.* at pp. 559−560.) For purposes of demurrer in the borrowers' suit for equitable relief, the mortgagee admitted the stipulated judgment was collusive and fraudulent and to knowing that the borrowers' attorney lacked authority to stipulate to a default. (*Id.* at p. 560−561, 566.) Finally, in *Park, supra,* 27 Cal.3d 337, an attorney appeared on a wife's behalf in a dissolution proceeding without her knowledge or consent after she was suddenly deported. The attorney did not protect her interests, and the husband implied his wife's relocation to Korea was voluntary. As soon as she could reenter the United States, the wife retained new counsel and immediately moved to vacate the dissolution judgment. These facts entitled her to equitable relief because her involuntary deportation deprived

Absent evidence of extrinsic fraud, the trial court could not use its inherent equity powers to set aside the 2015 fee order as void. (*Navarro*, *supra*, 134 Cal.App.4th at p. 844.) Jacinto was instead limited to bringing a statutory motion under section 473, the deadline for which had long since passed. (*Beresh*, *supra*, 92 Cal.App.3d at p. 552; see § 473, subd. (b) [six-month deadline to set aside an order for "mistake, inadvertence, surprise, or excusable neglect"]; *Pittman*, *supra*, 20 Cal.App.5th at p. 1021 [six-month deadline applies to motions under section 473, subdivision (d) to set aside orders valid on their face but void based on extrinsic evidence].) The court reasonably denied equitable relief based on unsupported claims of collusion between opposing counsel.

b. *The* Daley *exception does not apply*.

Finally, Jacinto relies on *Daley*, *supra*, 227 Cal.App.2d 380 and its progeny to claim equitable relief based on Nahigian's neglect.[18] He contends Nahigian's failure to oppose the fee motion or promptly set aside the resulting order amounted to "positive misconduct" warranting equitable relief. As we explain, the *Daley* exception is narrow and does not apply to the circumstances here.

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her of a fair hearing. (*Id.* at pp. 343−345.) Simply put, there is no *evidence* of extrinsic fraud to warrant a similar result here.

[18] In his unsuccessful first set aside motion under section 473, subdivision (b), Jacinto claimed Nahigian's failure to appear at the February 2018 hearing constituted *excusable* neglect. (See *Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1399−1400 [attorney neglect is excusable only if a reasonably prudent attorney might have made the error under similar circumstances; conduct falling below the professional standard of care is not excusable].) In 2017, represented by McCarron, Jacinto framed Nahigian's errors as *inexcusable* neglect under the *Daley* line of cases.

A lawyer's "inexcusable neglect is ordinarily imputed to the client," whose remedy "is an action for malpractice." (*Aldrich v. San Fernando Valley Lumber Co*. (1985) 170 Cal.App.3d 725, 738 (*Aldrich*).) But "in a case where the client is relatively free from negligence, and the attorney's neglect is of an extreme degree amounting to positive misconduct," the client can seek relief provided he acts with due diligence and there is no resulting prejudice to the other side. (*Id.* at pp. 738.) "Positive misconduct is found where there is a total failure on the part of counsel to represent his client." (*Id.* at p. 739.)

The theory of attorney abandonment was first articulated in *Daley*, *supra*, 227 Cal.App.2d 380. The plaintiff's attorney delayed serving a necessary party and failed to appear at pretrial conferences; communicate with his client, opposing counsel, or the court; or file a substitution of counsel form after agreeing to withdraw. (*Id.* at pp. 387−388, 391−392.) The trial court dismissed the case for want of prosecution and denied a section 473 motion filed by new counsel. (*Id.* at p. 388.) The appellate court reversed. The attorney's neglect was "extreme, amounting to positive misconduct." (*Id.* at p. 391.) His "consistent and long-continued inaction was so visibly and inevitably disastrous, that his client was effectually and unknowingly deprived of representation." (*Ibid.*) Rejecting defendant's argument that the plaintiff ignored her attorney's lapses, the court reasoned, "[c]lients should not be forced to act as hawklike inquisitors of their own counsel, suspicious of every step and quick to switch lawyers." (*Id.* at p. 392.) *Daley* thus created an exception to the general rule that attorney neglect is imputed to the client. (*Id.* at p. 391.)

The Supreme Court approved the *Daley* exception but cautioned that it should be "narrowly" applied. (*Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 900 (*Carroll*).) The exception can be invoked only where the record shows a "de facto severance of the attorney-client relationship." (*Id.* at p. 901.) This entails more than gross mishandling of a given matter: the record must indicate *abandonment* of the client. (*Id.* at p. 900.) In all other cases, the client's redress for counsel's inexcusable neglect "is, of course, an action for malpractice." (*Id.* at p. 898.) A narrow construction serves important policy interests—otherwise, "negligent attorneys [could] find that the simplest way to gain the twin goals of rescuing clients from defaults and themselves from malpractice liability, is to rise to even greater heights of incompetence and professional irresponsibility while, nonetheless, maintaining a beatific attorney-client relationship." (*Id.* at p. 900.)

In *Carroll*, parents sued a drug company, alleging in utero exposure to a drug caused brain damage to their child. At her deposition, the mother disclosed certain health records in her possession, and the defendant requested their production. When her attorney failed to produce them despite two motions to compel, the trial court dismissed the action. (*Carroll, supra,* 32 Cal.3d at p. 896.) It later granted section 473 relief, reasoning that although counsel had been grossly negligent, dismissal was inappropriately harsh. (*Id.* at p. 897.) The Supreme Court reversed. Despite the attorney's gross mishandling of the document production, "the record fails to show the kind of de facto severance of the attorney-client relationship which is necessary to bring the *Daley* doctrine into play . . . ." (*Id.* at p. 901.) Counsel actively engaged in ongoing

discovery, propounding and responding to interrogatory requests, defending his client at deposition, and even seeking extensions to produce the requested documents. (*Id.* at p. 900.) Because the record did not show "a total failure on the part of counsel to represent the client" or conduct that "in effect, obliterates the existence of the attorney-client relationship," the set aside motion should have been denied. (*Id.* at pp. 898, 900, italics omitted in second quote.)

In cases applying the *Daley* exception, the record demonstrates an attorney's total abandonment of his or her client or a de facto severance of the attorney-client relationship. (See *Seacall Development, Ltd. v. Santa Monica Rent Control Bd.* (1999) 73 Cal.App.4th 201, 208 (*Seacall*) [counsel "sat on the case and did nothing to represent Seacall"]; *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 74 ["Fleming's attorneys expressly and impliedly promised they would prosecute her lawsuit while they took no action whatsoever"]; *Aldrich*, *supra*, 170 Cal.App.3d at p. 739 ["the record discloses no activity by, and no presence whatever of the attorney, Brotman, after he filed the amended complaint"]; *Orange Empire Nat'l Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353–354 [counsel's "utter failure to represent his client" included not answering the complaint or interposing the defense asserted by the client, not setting aside the resulting default, failing to appear at the prove-up trial, and not moving to set aside the resulting judgment].)

By contrast, attorney neglect falling short of total abandonment does not fall within *Daley*'s rubric. Apart from *Carroll*, the *Daley* exception did not apply where an attorney made a calendaring error that resulted in dismissal of his client's action. (*County*

of San Diego v. Dept. of Health Servs. (1991) 1 Cal.App.4th 656, 664−665 [county's lawyer failed to file an "at-issue" memorandum within the six-month statutory deadline, prompting dismissal].) Nor did it apply in *Beeman v. Burling* (1990) 216 Cal.App.3d 1586 (*Beeman*), where defense counsel's failure to answer a complaint resulted in a nearly $200,000 judgment against the defendant. Defense counsel "continued to act, albeit ineffectively" as his client's representative, actively engaging in settlement negotiations, trying to relieve his client of the default, and telling opposing counsel that he intended to seek section 473 relief. (*Id.* at pp. 1603−1604.)[19]

Our record does not indicate that Nahigian *abandoned* Jacinto or *obliterated* the attorney-client relationship, notwithstanding his mishandling of the fee motion. Instead, "he continued to act, albeit ineffectively," on Jacinto's behalf. (*Beeman, supra,* 216 Cal.App.3d at p. 1603.) Between November 2014 and July 2015, Nahigian actively pursued a global settlement with Stubblefield that would cover the underlying judgment and any claim to attorney's fees. During that time, he made "numerous attempts" to communicate with opposing counsel about construction "punch list" items pertaining to the judgment. He e-mailed Williamson on February 5, 2015, stating the massive attorney fee request was unreasonable and offering to settle the entire case for around $50,000.

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19 *Carroll*, *Daley*, and *Beeman* involved appeals from orders granting or denying relief under section 473. They carry equal force as to nonstatutory motions for equitable relief filed after the six-month period. (See *Seacall, supra,* 73 Cal.App.4th at p. 207.) "To the extent that the court's equity power to grant relief differs from its power under section 473, the equity power must be considered narrower, not wider." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 857, accord *Carroll*, p. 901, fn. 8; see also *Talley v. Valuation Counselors Group, Inc.* (2010) 191 Cal.App.4th 132, 146.)

On the morning of the missed fee motion hearing, February 18, Nahigian and Williamson corresponded about the status of punch list items. That afternoon, Nahigian brought Jacinto to court to resolve the bench warrant issued against him for failing to appear for the judgment debtor examination.

Nahigian continued to represent Jacinto in settlement negotiations through July 2015, when he rejected Stubblefield's counteroffer. He expressed his intent to file a motion for reconsideration of the February 18 fee order, agreeing with Williamson on a September hearing date. In August he filed an ineffectual motion for section 473 relief. When that was denied, he filed a motion for reconsideration and argued it at a November hearing. Ultimately, Nahigian appealed the denial of section 473 relief. Jacinto decided to consult new counsel and believed "the appeal had no realistic chance of success." Accordingly, *Jacinto* "directed Mr. Nahigian to dismiss the appeal which he dismissed."

These facts are akin to the attorney's gross mishandling of the document request in *Carroll* or counsel's failure to answer a complaint in *Beeman*. Although both sets of errors led to significant adverse consequences for the clients, the *Daley* exception did not apply because there was no de facto severance of the attorney-client relationship. (*Carroll, supra*, 32 Cal.3d at pp. 900−901; *Beeman, supra,* 216 Cal.App.3d at pp. 1603−1604.) Without question, Nahigian grossly mishandled the fee motion, failing to file an opposition or promptly seek to set aside the adverse order. But he continued to act as Jacinto's representative to resolve construction tasks, reach a global settlement, and clear a bench warrant. After the adverse fee order, he tried (ineffectively) to set it aside. The appeal was ultimately abandoned at Jacinto's direction. We are sympathetic to

Jacinto, who reasonably relied on retained counsel and is now held to his unprofessional errors. But inherent to *Carroll*'s directive to narrowly construe the *Daley* exception is the possibility that some clients, through no fault of their own, will be responsible for their attorneys' missteps. On our record, we conclude Jacinto is not entitled to equitable relief under the *Daley* line of cases. His recourse is through his malpractice action, already filed, against Nahigian. (*Carroll*, at p. 898.)

4. *The sanctions requests are denied.*

Jacinto's reliance on *Daley*, *supra*, 227 Cal.App.2d 380 leads us to deny Stubblefield's request for sanctions. Although the *Daley* exception does not apply to the facts before us, we cannot say that this particular argument is so totally lacking in merit that McCarron had a professional obligation not to pursue the appeal. (*Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 828, 830.) We readily reject Jacinto's counter-request to sanction Williamson for presenting a "frivolous sanctions request." Of the many claims Jacinto raised, only one merited this appeal.

DISPOSITION

The order denying Jacinto's motion to set aside the February 2015 attorney's fee order is affirmed. The parties' requests for sanctions are denied. Stubblefield is entitled to recover its costs on appeal.

DATO, J.

WE CONCUR:

NARES, Acting P. J.

IRION, J.